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10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 **In re**

13 **CENTURION PROPERTIES III,**
14 **LLC,**

15 **Debtor.**

Case No. 10-04024-FLK 11

Chapter 11

16 **STIPULATED ORDER**
17 **AUTHORIZING FINAL USE OF**
18 **CASH COLLATERAL**

19 This matter came before the Court pursuant to the above-captioned Debtor's
20 Motion to Use Cash Collateral [Docket No. 3] (the "**Cash Collateral Motion**"),
21 the Memorandum in support thereof [Docket No. 6], the Response thereto of
22 General Electric Capital Corporation ("**GECC**") [Docket No. 17], the Court's First
23 Interim Order Authorizing Use of Cash Collateral Pending Future Order [Docket
24 No. 21] (the "**First Interim Cash Collateral Order**"), and the Court's Order
25 Setting Interim & Final Hearing on Debtor's Motion for Use of Cash Collateral
26 (the "**Scheduling Order**").
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1 Pursuant to the Scheduling Order, this matter came before the Court for
2 hearing on August 10, 2010, September 1, 2010 and September 9, 2010.
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4 Appearances were made as noted in the record of such hearing. The final cash
5 collateral hearing is set for September 17, 2010 at 2:00 p.m.

6 Through the Cash Collateral Motion, the Debtor seeks authority to use cash
7 collateral as defined in Section 363 of the Bankruptcy Code¹ and terminate the
8 Lockbox (as defined below). As set forth herein, GECC is willing to stipulate to
9 the use of cash collateral and termination of the Lockbox, provided that (a) the
10 Court provides adequate protection of GECC's interest in its cash collateral and (b)
11 the Debtor is only permitted to use cash collateral in accordance with the terms of
12 this Order.
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16 Upon review and consideration of the Cash Collateral Motion, the Court
17 having conducted an interim hearing in accordance with Section 363 of the
18 Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure
19 (the "**Bankruptcy Rules**"), upon appropriate notice and after due deliberation and
20 consideration of the evidence presented at such hearing, and sufficient cause
21 appearing therefor, THE COURT MAKES THE FOLLOWING FINDINGS OF
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24 FACT:

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27 ¹ References to Sections and Chapters of the Bankruptcy Code shall refer to Title 11, United States Code *et seq.*

1 1. Petition Date. On July 9, 2010 (the “**Petition Date**”) the Debtor filed
2 its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

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4 2. Jurisdiction and Venue. This Court has jurisdiction over the matter
5 pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant
6 to 28 U.S.C. §§ 1408 and 1409.

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8 3. Core Proceeding. The disposition of the Cash Collateral Motion is a
9 core proceeding pursuant to 28 U.S.C. § 157(b)(2).

10 4. Notice. Notice of the Cash Collateral Motion and the opportunity for
11 a hearing on this Motion were appropriate and no other or further notice need be
12 given.
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14 5. The Battelle Property. The “**Battelle Property**” consists of five
15 buildings, related improvements and common areas located on the leasehold
16 estates located in Richland, Washington at the Battelle Memorial Institute Campus,
17 all of which are leased back to Battelle Memorial Institute pursuant to five
18 facilities leases (the “**Battelle Leases**”).
19

20 6. GECC’s Loan and Security Interest. On or about November 28, 2006,
21 GECC and the Debtor entered into that certain Loan Agreement (the “**Loan**
22 **Agreement**”, and the loan made pursuant thereto, the “**Loan**”), secured by, among
23 other things, the Deed of Trust, Assignment of Rents and Leases, Security
24 Agreement and Fixture Filing (Leasehold Estates) on the Battelle Property and
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1 other collateral (the “**Deed of Trust**” and together with the Loan Agreement and
2 any and all documents related thereto, the “**Loan Documents**”). Pursuant to the
3 Loan Documents, revenues from the Battelle Property are paid into a Lockbox,
4 from which a portion of the interest due to GECC under the Loan Documents and
5 expenses related to the Battelle Property are paid (the “**Lockbox**”). The Loan
6 matured by its terms on November 30, 2009. As of the Petition Date, the
7 outstanding principal balance of the Loan was \$58,258,354 (plus fees and expenses
8 incurred by GECC prior to the Petition Date chargeable to the Debtor under the
9 Loan Documents). GECC asserts that (i) it has a valid, perfected, enforceable, and
10 unavoidable first priority lien upon and security interest in substantially all of the
11 Debtor’s assets, including real and personal property and cash collateral, which
12 secure Debtor’s prepetition obligations to GECC under the Loan Documents, and
13 (ii) it is entitled to adequate protection in connection with any use by the Debtor of
14 any cash collateral.
15

16 7. Revenues and Expenses. The funds currently deposited into the
17 Lockbox (which will be paid into the Money Market Account (as defined below))
18 are paid to the Debtor by Battelle pursuant to the Battelle Leases and consist of: (i)
19 Base Rent, (ii) Service Rate Payments and (iii) Task Order Payments. GECC
20 contends that its security interest attached to all such revenues. The Debtor asserts
21 that payments related to Service Rents and Task Order Property are payments
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1 made by Battelle pursuant to the underlying lease agreements, specifically
2 definitions concerning Service Rates, Annual Service Rate Determination, and
3 Task Orders. The Debtor represents as follows:
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5 a. The “**Base Rent**” is the amount charged by the Debtor for
6 Battelle to lease the Property.
7

8 b. The “**Service Rate Payments**” (aka service rent) are payments
9 designed to cover the operating costs of the facilities which have been negotiated
10 and already approved by Battelle, plus a management fee which Battelle also
11 negotiated and incorporated into the Battelle Leases. For example, in the Battelle
12 Leases the ground rent payable back to Battelle, property taxes, insurance, all
13 utilities, HVAC and the like are included in the Service Rate Payments. Service
14 Rate Payments are based on such estimated operating costs and management fees
15 for the applicable year and paid in equal monthly installments. Battelle reviews
16 and approves the Service Rates annually and Debtor does a year-end
17 reconciliation. Often, the Debtor expends more throughout the year for Service
18 Rate Payments and recovers the shortfall from Battelle after the year end
19 reconciliation. In the interim the Debtor funds the shortfall in service rent
20 payments from the Base Rents. However, upon reconciliation, all operating costs
21 are ultimately paid by Battelle.
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27 c. The “**Task Order Payments**” represent payments for work
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1 (such as capital improvements). Pursuant to Battelle Leases, Battelle requests the
2 Debtor obtain bids and supervise construction of numerous, substantial
3 improvements to the Property on a continuous basis. At times, monthly Task
4 Order Payments can exceed \$1,000,000, particularly during the summer
5 construction season. Although it is Battelle that exclusively selects and approves
6 the Task Order work to be performed, the Battelle Leases are structured to shift
7 the administration and disbursement function to the Debtor, rather than directly by
8 Battelle. Task Order requests and payment procedures are governed and
9 controlled by the underlying lease agreement and basic ordering agreement
10 between Battelle and the Debtor. Task Order Payments are paid upon completion
11 or during the applicable project.

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16 7. Stipulation and Good Faith. The Debtor and GECC have conducted
17 good faith negotiations relating to the Debtor's use of GECC's cash collateral and
18 the termination of the Lockbox, such negotiations were at arms length, and the
19 proposed terms and conditions as set forth herein are fair and reasonable under the
20 circumstances.

21
22 NOW THEREFORE, after due deliberation and sufficient cause appearing
23 therefor, it is hereby ORDERED:

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25 1. Effect of Order. The First Interim Cash Collateral Order is hereby
26 superseded by this Order. This Order shall serve as the Court's order with respect
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1 to cash collateral and shall be deemed its final order upon expiration of the time
2 period required by Rule 4001(b)(2) of the Bankruptcy Rules.
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4 2. Use of Cash Collateral. Subject to this Order, the Debtor is authorized
5 to use cash collateral in accordance with an Approved Budget (as defined below)
6 or as otherwise ordered by the Court.
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8 3. Budgets.

9 a. Initial Budget. Commencing on the date that this Order is
10 entered and continuing through December 31, 2010, the Debtor shall use cash
11 collateral in accordance with the requirements of the underlying leases with
12 Battelle and consistent with the Budgets attached hereto as Exhibit A subject to
13 Permitted Variance.
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16 b. Subsequent Approved Budgets. The Debtor will prepare its
17 budget for the three (3) month period (a "**Budget Period**") commencing January 1,
18 2011. This shall be prepared in accordance with past practice, including a lease
19 supplement to be executed with Battelle adjusting Service Rents for the annual
20 Service Rent Period commencing October 1, 2010. This budget shall be submitted
21 to GECC for approval on or before December 17, 2010, and a hearing for the
22 approval thereof shall be take place on or before December 31, 2010.
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25 c. Permitted Variance. The Debtor shall be permitted to exceed
26 the aggregate amount in the Budget for expenditures related to Service Rate
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1 Payments by an amount not to cumulatively exceed ten percent (10%) over the
2 amount of Service Rate Payments actually collected from Battelle since the
3 beginning of the applicable Service Rate Budget Period ("**Permitted Variance**").
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5 In the event the Service Rate expenditures are to exceed the budget by more than
6 ten percent (10 %), the Debtor shall seek permission of GECC for payment of such
7 additional amount. In the event consent to payment is withheld as to the variance,
8 the Debtor may seek Court permission for payment.

10 d. Task Order Payments. Projected revenues and expenditures
11 related to Task Order Payments, as well as they are known at the time, shall be set
12 forth in the proposed budget for each Budget Period. The Debtor shall be permitted
13 to pay Task Order Payments, provided that all such expenditures are paid solely
14 from funds received on account of Task Order Payments previously collected from
15 Battelle. Task Order Payments may only be paid from funds from any source other
16 than Task Order Payments if (i) included in an Approved Budget, or (ii) ordered by
17 the Court.

21 e. Administrative Claims and United States Trustee Fees. This
22 Order shall be without prejudice to the right of the Debtor to apply to the Court on
23 appropriate notice and motion to seek approval and payment of administrative
24 expenses, professional fees, which shall be estimated Budgets. United States
25 Trustees fees may be paid as a budget approved expense in the ordinary course
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1 with cash collateral. The payment of such fees pursuant to the Budget or as ordered
2 by the Court may be paid with funds in the Money Market Account.
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4 4. Lockbox. Upon entry of this Order, the Debtor will establish a
5 Money Market Account at Washington Trust Bank (the “**Money Market**
6 **Account**”). All funds currently on deposit in the Lockbox shall be transferred to
7 the Money Market Account. All future revenues from the Battelle Property will
8 also be deposited into the Money Market Account. Within ten (10) days of the
9 entry of this Order, the Debtor shall instruct all tenants of the Battelle Property that
10 any and all payments related to the Battelle Property should be directed to the
11 Money Market Account. Money Market Account will be controlled solely by the
12 Debtor and not require GECC’s signature or written approvals for withdrawals
13 therefrom. Disbursements from the Money Market Account shall be made solely
14 by the Debtor and solely in accordance with this Order. To the extent the Debtor
15 has any right to funds in the Money Market Account, GECC is hereby granted a
16 first priority perfected security interest in and lien upon the Money Market
17 Account, all Debtor’s rights in the funds therein, and any interest earned thereon.
18 GECC shall be entitled to inquiry only access to view and review the balance and
19 account activity of the Money Market Account and shall have complete, real time,
20 direct access to information related to the Money Market Account, including
21 through online access to the account. GECC will not, however, have the ability to
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1 control activity in the Money Market Account. The Debtor, GECC, Deutsche
2 Bank, and Washington Trust Bank, are authorized and empowered to take all
3 actions necessary to implement the relief granted in this Order. GECC agrees to
4 provide any reasonable required authorizations requested by Battelle to allow lease
5 payments to be made to the Money Market Account.
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8 5. Interest Payments.

9 a. Background. Pursuant to the Loan Documents, GECC is
10 entitled to the monthly payment of interest based on the outstanding principal
11 amount of the Loan on the first day of each month. Under the Loan Documents,
12 the outstanding principal balance of the Loan bears interest at a rate of interest
13 equal to six and thirty-six hundredths percent (6.36%) per annum (the “**Contract**
14 **Rate**”), plus a default rate of interest equal to an additional five percent (5%) per
15 annum (the “**Default Rate**”). GECC may seek fees and costs related to the Loan
16 under the Loan Documents. The Debtor reserves the right to challenge the
17 reasonableness of such fees and costs.
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19 b. Adequate Protection Payment. To provide adequate protection
20 of GECC’s interest in the property securing its prepetition secured claims against
21 the Debtor resulting from the use of cash collateral, it is hereby ordered that on or
22 before the 1st day of each month, the Debtor shall pay GECC \$330,000.00. Such
23 payment shall be in satisfaction of the interest accruing on the Loan for that month
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1 at the Contract Rate. All payments received by GECC, including any amount paid
2 on a monthly basis in excess of the interest accruing at the Contract Rate, shall be
3 applied to the Loan according to the terms of the Loan Documents and GECC is
4 hereby authorized and granted relief from stay to do so. In addition thereto, and as
5 further adequate protection of GECC's interest, interest shall accrue on the
6 outstanding principal balance of the Loan at the Default Rate in accordance with
7 the Loan Documents ("**Default Interest**"). The Debtor reserves the right to contest
8 GECC's right to Default Interest to the extent GECC is determined **not** to be
9 oversecured and further reserves the right, if any, to modify the terms and the
10 present loan, including Default Interest, through a Plan of Reorganization
11 consistent with the confirmation standards in the Bankruptcy Code.
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16 6. Replacement Liens. To provide further protection to GECC for any
17 decrease in the value of its interest in any property securing its prepetition secured
18 claims against the Debtor resulting from the use of cash collateral by the Debtor,
19 and to secure any such decrease, GECC is hereby granted a first priority perfected
20 security interest in and lien upon all property constituting "Mortgaged Property" as
21 defined in the Deed of Trust, whether now owned and existing or hereafter
22 acquired, created or arising, and all products and proceeds thereof (including,
23 without limitation, all claims of the Debtor against third parties for loss, damage or
24 diminution of the value of such property), including all accessions thereto,
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1 substitution and replacement thereof, wherever located (the “**Replacement**
2 **Collateral**” and the lien described above, the “**Adequate Protection Lien**”).

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4 7. Administrative Claim. To provide further protection to GECC for any
5 decrease in the value of its interest in any property securing its prepetition secured
6 claims against the Debtor resulting from the use of cash collateral by the Debtor,
7 GECC shall be entitled to any and all rights afforded by Section 507(b) of the
8 Bankruptcy Code.
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10 8. Waiver of Surcharge. Except as otherwise authorized by an order of
11 this Court, neither the Debtor nor any party who receives notice pursuant to
12 Bankruptcy Rule 4001(d) shall be entitled to directly or indirectly charge any of
13 the Replacement Collateral or GECC’s collateral under the Loan Documents
14 pursuant to Sections 105 or 506(c) of the Bankruptcy Code, direct the exercise of
15 remedies, or seek (whether by order of this Court or otherwise) to marshal or
16 otherwise control the disposition of the Replacement Collateral or GECC’s
17 collateral under the Loan Documents.
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20 9. Further Adequate Protection. If the protections afforded herein are, in
21 retrospect, inadequate or otherwise fail to adequately protect GECC’s interest,
22 GECC may be entitled to a “super-priority” administrative claim under Section
23 507(b) of the Bankruptcy Code to the full extent of any deficiency, but subject to
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1 Debtor's reservation of rights herein and shall be entitled to seek an order allowing
2 such a claim.

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4 10. Automatic Perfection. The Adequate Protection Lien and all liens
5 granted hereunder shall be deemed valid and enforceable as of the Petition Date
6 with no further action required by GECC. The granting of the Adequate Protection
7 Lien is in addition to the liens and security interests of GECC in its existing
8 collateral. The Adequate Protection Lien is governed by all the terms of the Loan
9 Documents covering the collateral of GECC, except to the extent (if at all) directly
10 contrary to the terms this Order or the Bankruptcy Code. The Adequate Protection
11 Lien and other liens granted hereunder shall be deemed attached and perfected
12 automatically and retrospectively to the Petition Date by entry of this Order.
13 GECC shall not be required to record mortgages or file financing statements in
14 order to perfect the Adequate Protection Lien, other liens granted hereunder or its
15 security interest in the Replacement Collateral.
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20 11. Reports and Access. The Debtor shall provide: (i) all reasonable
21 financial reports for the each calendar month to GECC on or before the fifteenth
22 day of any following month during which this Order (or a replacement cash
23 collateral order) is in effect, commencing on September 15, 2010, and (ii) such
24 other information relating to the Battelle Property and its leasing as GECC may
25 reasonably request from time to time (including, without limitation, information on
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1 the status of rental, operating expenses, property maintenance, accounts paid,
2 payable and receivable, capital improvements and repair costs, on reasonable
3 notice). Notwithstanding the foregoing, GECC agrees it will not directly, or
4 through its agents, contact Battelle directly unless it has first obtained Debtor's
5 reasonable consent, which may require Debtor to be included in any
6 communication.
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9 12. GECC's Liens. In consideration for the use of cash collateral, subject
10 to Section 16 hereof, pursuant to this Order, GECC's first priority lien upon and
11 security interest in all property owned, leased or in which and to the extent the
12 Debtor has "rights" therein, and products, rents and proceeds thereof, are hereby
13 confirmed. The parties reserve any and all rights with respect to whether GECC
14 holds a security interest in the Service Rate Payments or Task Order Payments.
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17 13. Restriction on Additional Financing. So long as the Debtor is
18 authorized to use cash collateral pursuant to this Order, the Debtor shall not seek
19 any order under 11 U.S.C. § 364(d)(1) with respect to any property of the estate
20 which is subject to a security interest of GECC except for: (i) a loan whose
21 proceeds would be used to pay the Loan in full, and (ii) as GECC may agree in
22 writing, or (iii) for purchase money trade debt (e.g. equipment leasing and liens on
23 supplies).
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14. Right to Credit Bid. GECC shall have the right to “credit bid” the allowed amount of its secured claim in any sale, lease or other disposition of assets that secure the Debtor’s obligations under the Loan Documents, including, without limitation, sales occurring pursuant to Sections 363 or 1123(a)(5)(D) of the Bankruptcy Code or included as part of any plan subject to confirmation under Section 1129(b)(2)(A)(ii) of the Bankruptcy Code.

15. Debtor's Reservation of Rights. The Debtor reserves the right to request additional use of cash collateral, and GECC shall have the ability to object to, contest, and challenge any such additional use of cash collateral. Before seeking an order for additional use of cash collateral, except in case of emergency or GECC agrees otherwise in writing, the Debtor agrees to provide GECC at least five (5) business days' prior notice particularly identifying the expenses for which the Debtor will seek Court approval for further use of cash collateral.

16. Immediate Effect. Notwithstanding the possible applicability of Rules 6004(h), 7062, and 9014 of the Bankruptcy Rules, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry as to GE and the Debtor. After the notice requirements of Bankruptcy Rule 4001(d) are satisfied, this Order shall be binding on all parties in interest.

17. Continued Compliance with the Loan Documents. Except to the extent of those covenants which are already the subject of pending litigation, the

1 Debtor shall honor the covenants in the Loan Documents, including, without
2 limitation, relating to insurance coverage on the existing collateral and insurance
3 coverage shall continue in full force and effect as to the existing collateral and any
4 Replacement Collateral.
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6 18. Operating Reports. The Debtor shall timely file all United States
7 Trustee Operating Reports and simultaneously provide copies to GECC.
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9 19. Events of Default. Any of the following events shall constitute an
10 “Event of Default”:
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12 a. Failure of the Debtor to comply with any term or requirement
13 of this Order or any action taken by the Debtor in contravention thereof
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15 b. Entry of an order or judgment (i) terminating the authority of
16 the Debtor to use all or any portion of the existing collateral or Replacement
17 Collateral; (ii) dismissing this bankruptcy case or converting this case to a Chapter
18 7 case; (iii) appointing a Trustee; or (iv) granting any party in interest other than
19 GECC relief from stay with respect to any property securing the Debtor’s
20 obligations to GECC;
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22 c. The Debtor’s expenditures exceed any approved budget by
23 more than the Permitted Variance without the written approval of GECC or
24 approval from the Court;
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d. The commencement by the Debtor against GECC of any lawsuit, adversary proceeding, contested matter or other proceeding, which asserts any cause of action against GECC; or

e. This Order being vacated, amended (other than by agreement of the parties with the approval of the Court), reversed or stayed.

For avoidance of doubt, the effect of the Debtor violating the provisions of Section 19, above shall be that GECC's consent to use cash collateral is immediately terminated and the Debtor may seek approval of the Court to use cash collateral for any purpose, and GECC shall be entitled to oppose such relief on any and all basis.

20. Notice of Certain Events of Default. Upon the occurrence of an Event of Default of the type described in Sections 19.a, upon the expiration of five (5) business days following the date of the receipt by the Debtor or its counsel of a written notice of default from GECC or its counsel, and the failure of the Debtor to cure such default within a ten (10) business day period (except in the case of a payment default, which must be cured within two (2) business days after a hearing in connection with an Event of Default may be heard on an expedited basis by either the Debtor or GECC.

21. Termination of Authority to Use Cash Collateral. The authority of the Debtor to use cash collateral will automatically terminate, without further action by

1 GECC, the Debtor or the Court: (a) immediately upon the occurrence of an Event
2 of Default of the type described in Sections 19.b, 19.c, 19.d or 19.e; or (b)
3 following notice and opportunity to cure upon the occurrence of an Event of
4 Default of the type described in Sections 19.a.
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6 22. Binding on Successors and Assigns; Modification. This Order shall
7 be binding upon GECC and the Debtor, and their respective successors and assigns
8 (except any trustee hereafter appointed or elected as a representative for the estate
9 of the Debtor in the above-captioned Chapter 11 proceeding or a subsequent
10 proceeding under Chapter 7 of the Bankruptcy Code) and shall inure to the benefit
11 of GECC and the Debtor (except with respect to any trustee hereafter appointed or
12 elected as a representative for the estate) and their respective successors and
13 assigns. Except as expressly set forth in this Order, no third parties are intended to
14 be or shall be deemed to be third party beneficiaries of the provisions of this Order.
15 In the event that all or any of the provisions of this Order are hereafter modified,
16 vacated or stayed (a “**Modification**”), the parties shall be entitled to the benefit of
17 this Order until the Modification becomes effective. Nothing herein shall waive,
18 release, modify, impair or restrict either Debtor’s nor GECC’s rights, remedies,
19 and privileges under the Loan Documents.
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Dated: September 16, 2010

Frank L. Kurtz
United States Bankruptcy Judge

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Presented by:

CRUMB & MUNDING, P.S.

/s/ John D. Munding

JOHN D. MUNDING, WSBA #21734

Attorneys for Debtor-in-Possession.

Approved as to form,

Notice of Presentation Waived.

LATHAM & WATKINS LLP

/s/ Peter M. Gilhuly

PETER M. GILHULY, *PRO HAC VICE*

Attorneys for General Electric Capital Corporation

So Ordered this 17th
day of September, 2010
Frank L. Kratz
Bankruptcy Judge